

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Michael Osteen,)	C/A No. 3:05-1868-CMC
)	Cr. Nos. 3:98-524 and 3:99-73
Petitioner,)	
)	
-versus-)	OPINION and ORDER
)	
United States of America,)	
)	
Respondent.)	
_____)	

Petitioner is a *pro se* federal inmate who seeks relief pursuant to 28 U.S.C. § 2255. Petitioner seeks relief in this court pursuant to the Supreme Court’s decision in *Blakely v. Washington*, 542 U.S. 296 (2004), as applied in *United States v. Booker*, 543 U.S. ____, 125 S. Ct. 738 (2005).

This petition is successive in nature. Petitioner’s previous petitions, *Osteen v. United States*, D.S.C. C/A Nos. 3:02-2043-SB and 3:02-2050-SB, were heard and denied in 2003.¹ Therefore, Petitioner’s failure to seek permission to file a second or successive petition in the appropriate court of appeals prior to the filing of the petition in the district court is fatal to the outcome of any action on the petition in this court.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), placed specific restrictions on second or successive motions under 28 U.S.C. § 2255. Prior to filing a second or successive petition under § 2255, Petitioner must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive petition. As provided in 28 U.S.C. § 2244, “[b]efore a second or successive application

¹Petitioner was charged in two separate indictments. Upon conviction, the sentences imposed by Judge Dennis W. Shedd were set to run concurrently with each other. *See* D.S.C. Cr. No. 3:98-524 and 3:99-73. Judge Shedd has since been elevated to the Fourth Circuit Court of Appeals.

permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). This he has not done. Petitioner argues that he is not filing a successive petition; rather, that he is filing a new petition based upon new law. This argument is without merit.

IT IS THEREFORE ORDERED that this petition is dismissed as this court is without jurisdiction to consider it.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 26, 2005

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